

Protest of)
) Date: June 3, 1988
 FAIRFIELD STAMPING CORPORATION)
)
 Solicitation No. 339990-87-A-0163) P.S. Protest No. 88-04

DECISION

Fairfield Stamping Corporation (Fairfield) timely protests its rejection as nonresponsible under Solicitation No. 339990-87-A-0163 for locking cordfasteners. Fairfield alleges that the contracting officer's determination was arbitrary, capricious, and unsupported by substantial evidence.

Solicitation No. 339990-87-A-0163 was issued by the New Jersey Procurement & Materiel Management Services Office on July 3, 1987, with an bid opening date of August 3, 1987. When bids were opened, Fairfield was low. On August 4, the contracting officer requested additional information from Fairfield, which it supplied on September 2. On September 29, a pre-award survey was conducted at Fairfield's facility by a postal quality assurance program coordinator (QAPC). The contracting officer and the QAPC held a follow-up visit on December 3. Throughout this evaluation process, Fairfield provided the contracting officer with requested information and indicated its willingness to furnish any necessary additional information.^{1/} On January 13, 1988, the contracting officer rejected Fairfield as nonresponsible for the following reasons:

1. Assembly and delivery of 20,000 pieces per week

Your company lacks the necessary capacity for the manufacture of tool and die sets and special assembly fixtures. Your letter of December 18, 1987 states assembly of 500 pieces per hour on [sic] per machine is unsubstantiated and impossible to achieve with only two (2) persons operating the equipment and

^{1/}Fairfield also agreed, on three occasions, to a bid extension to allow the contracting officer to complete his evaluation.

performing the sub-assembly of staple, spool, and lever, and insertion of all remaining parts into the assembly staking fixture. Using a time motion study, based on using one person per machine as you have proposed, the USPS has determined the output per machine is 120 pieces per hour, producing a maximum of less than 9,000 pieces per week.

2. Special Equipment for Cam and Staple Subassembly.

Fairfield Stamping Corp. has provided a quotation for a 10" Index Table. No other documentation was provided for the hopper feeder, timing controls or a detailed plan to produce the necessary assembly fixturing to control the insertion of the cam into the staple.

This protest followed. We will discuss each issue raised in the protest separately.

Issues Presented

Fairfield gives five reasons to reverse the contracting officer's determination of nonresponsibility. Fairfield asserts that it can meet the necessary production requirement of 20,000 units a week, that it has documentation proving that it will have the necessary equipment to manufacture the cam and staple subassembly, that neither the contracting officer nor the QAPC has sufficient relevant experience in reviewing production plans, that its successful performance in 1984 as a subcontractor producing cams for postal keylocks has been ignored, and that the rejection of its bid shows impermissible bias and prejudice against it.^{1/}

Production and Delivery Requirements

Before analyzing the parties' position on the production and delivery issues, it is helpful to describe briefly the necessary steps in producing a locking cordfastener.^{1/} The cordfastener is composed of seven pieces. The pieces are pressed out of flat coil steel. The cam and staple pieces are subassembled, and that subassembly is merged with the remaining pieces in final assembly. The assembled cordfastener is staked so that it will stay together. Thus, there are three main elements of work involved: pressing, assembling, and staking.

^{2/}A sixth issue initially raised, whether Fairfield has the capacity to produce the necessary tooling, was rendered moot when the contracting officer admitted that his negative conclusion in this regard was in error.

^{3/}Much confusion arises in this protest from the parties' use of the same words to describe different operations in the manufacture of the cordfastener. The operation by which the parts of the cordfastener are fabricated is called punching by Fairfield and pressing or stamping by the contracting officer. The operation by which pressure is put on the assembled pieces to ensure that the cordfastener holds together is called pressing by Fairfield and staking by the contracting officer. For consistency, we adopt the contracting officer's terminology.

Fairfield explains that it claimed that it would stake 250 pieces per hour per machine, not 500 as stated by the contracting officer, and that the 250 estimate is correct and reasonable, and achieves the required production rate of 20,000 units per week based on an eight-hour day and forty-hour week. Fairfield disparages the QAPC's time motion study as incorrectly structured and not based on data gathered at its facilities. It also objects that the study was never discussed with nor shown to it.^{4/} Finally, Fairfield notes that it committed on September 2 and December 18, to employ two additional shifts, if necessary, to meet the delivery schedule. The employees for these shifts, it contends, would have been easily hired from the surplus unskilled labor pool in New Jersey and would have met the required delivery schedule even using the QAPC's allegedly incorrect time motion study analysis.

The contracting officer admits that the January 13 letter misstated Fairfield's position that it could produce 500 pieces per machine per hour rather than 250. However, relying on an extensive analysis prepared by the QAPC,^{4/} the contracting officer continues to find Fairfield nonresponsive. He states that, utilizing only two assemblers for the assembly and staking operations, the QAPC's time study analysis indicated that Fairfield would be able to produce only 120 pieces per hour, well under the rate necessary to meet the required delivery schedule. The contracting officer believes the QAPC's time study represents a valid analysis of the time it would take Fairfield to manufacture the cordfasteners. Therefore, he could not affirmatively conclude that Fairfield could meet the required delivery schedule. The contracting officer also claims that Fairfield's offer to provide additional shifts is unsubstantiated and proves Fairfield's lack of confidence in its own production plan. He further states that Fairfield has made no provision for hiring additional supervisory and quality control personnel.

Fairfield responds that the QAPC has mistakenly assumed that one person would perform both the assembly and staking operations consecutively, whereas it made clear in its preaward survey submissions that four persons would be used per shift, two to assemble and two to stake. This discrepancy is said to arise from the QAPC's mistaken assumption that four people would be necessary to press the parts, whereas Fairfield only planned to use two people at this task. Fairfield submits its own analysis to demonstrate that, using the QAPC's time motion methodology, and substituting four persons instead of two in the assembly and staking functions, it can clearly meet the required delivery schedule.

^{4/}Fairfield notes that, using the contracting officer's 120 units per machine per hour number, the weekly production rate is 9,600 units, not the "less than 9,000" referred to in the contracting officer's January 13 letter.

^{5/}Throughout the protest, the contracting officer relies on the QAPC for analysis of technical issues.

The contracting officer responds that Fairfield's production plan only allocated two persons as assemblers, and that these assemblers would also perform the staking operation after assembling the unit. The pressing function, to which it had allocated another two people, is a stamping operation used to fabricate the cordfastener pieces, separate from the assembly operation on which the QAPC's study was based. Fairfield replies that the people it referred to as pressers would be used to stake the units. Fairfield claims that this misunderstanding in terminology totally undermines the assumptions on which the QAPC's study is based.

Cam and Staple Subassembly Equipment Documentation

Fairfield maintains that there is no lack of documentation regarding the equipment (hopper feeder, timing controls, and assembly fixtures) necessary to produce the cam and staple subassembly. Fairfield states that this equipment is readily available off-the-shelf and does not require special ordering or preparation for use in an assembly line. It asserts that standard industry practice for acquiring such items is to order them only after contract award. Therefore, Fairfield considered it unnecessary to demonstrate its commitment for these items.

The contracting officer asserts that, while the supply hopper and flow switch for the cam and staple subassembly are off-the-shelf items, the parts feeder is not. He states that it would take 13-18 weeks for a customized parts feeder to be manufactured, well beyond the time by which the First Article must be delivered. He also faults Fairfield for not having firm commitments to purchase any of the items necessary to assemble the cam and staple subassembly.

Fairfield responds by alleging that a specially ordered supply hopper, flow switch and parts feeder would not be necessary to fabricate the subassembly. It argues that a 10-inch index table, for which Fairfield provided a quotation to the QAPC, is said to be sufficient to accomplish the subassembly. Fairfield hypothesizes that the QAPC may have been misled by the devices he saw in place at Fairfield for other contracts and assumed that a similar process was contemplated for production of the cordfastener. The contracting officer counters that mechanical assembly of the subassembly is required because of the precise tolerances involved. He opines that a 10-inch index table would be insufficient for this process, and that Fairfield never provided a specific plan for manufacture of the subassembly. He notes that without a specific plan for subassembly manufacture, there was substantial doubt whether Fairfield could produce the required number of subassemblies within the contractual delivery requirements.

Fairfield responds that the fully automated system specified by the contracting officer is not required to manufacture the subassembly in sufficient quantity to meet the delivery schedule. It emphasizes that the index table is an appropriate alternative method for manufacturing the subassemblies.

Lack of Technical Expertise

Fairfield repeatedly emphasizes the contracting officer's alleged lack of technical expertise and argues that whatever expertise the QAPC had was irrelevant to the present procurement. It vigorously notes that both the QAPC and the contracting officer have analyzed its production plan in a confusing and mistaken manner and exhibited significant lack of knowledge about the manufacture and production of the cordfastener.

The contracting officer notes that the QAPC's qualifications and experience are extensive and strongly objects to what he perceives as the protester's repeated criticism that both he and the QAPC were technically unqualified. He states that these unjustified assertions are a ploy to attempt to impugn the credibility of the QAPC's judgments. Fairfield responds that the factual inconsistencies in the QAPC's analysis conclusively show that the QAPC was unfamiliar with analyzing a production plan such as Fairfield's, and that his lack of understanding undermines the weight to be given to his analysis.

Successful 1984 Contract Performance

Fairfield urges that its successful performance in 1984 as a subcontractor producing cams for postal keylocks supports its responsibility. It alleges that this important prior experience was arbitrarily ignored by the contracting officer.

The contracting officer regards Fairfield's prior experience and manufacturing capabilities to be irrelevant since it has never made this particular item before. He notes that the items previously made by Fairfield required only simple machine punching and were not nearly as complex as the cordfastener, which requires a detailed manufacturing process. Fairfield responds that past performance must be a part of the contracting officer's determination of responsibility, citing PCM 1-903.1 (iii) and the Postal Service Quality Assurance Handbook, Publication AS-706. It asserts that the contracting officer's failure to do so renders his nonresponsibility decision flawed.

Bias of Postal Employees

Fairfield expresses indignation that it should be rejected for a perceived inability to meet the delivery schedule when it had to extend its bid for 105 days at the request of the contracting officer because of administrative delays in bid evaluation. After receiving the contracting officer's statement and report, it extended this argument, alleging that the successful bidder, Al's Tool and Die, (Al's) was the subject of a pre-award survey which was much less stringent than that performed on Fairfield.^{6/}

^{6/}Fairfield points to three specific items which it claims indicate disparate treatment: acceptance of Al's statement that it could meet additional labor needs through the local state employment office; acceptance of a 1985 quote for spools, and acceptance of a steel quote which did not meet contract

Fairfield alleges that award would not have been made to AI's if it had been subjected to the same scrutiny as Fairfield was. Fairfield alleges that this bias was impermissible and indicates a mindset of the postal employees that it would not be awarded the contract.

The contracting officer responds that the lesser scrutiny applied to AI's was permitted by the quality assurance handbook¹⁷ because AI's had produced the cordfasteners under a prior Postal Service contract without late deliveries or quality problems whereas Fairfield had not. He states that no additional labor was necessary to AI's production plan, that the steel quoted conformed to the relevant specification, and that use of the 1985 spool quote was permitted by the quality assurance handbook. He concludes that there was ample justification for treating Fairfield and AI's differently, as they were not similarly situated. Fairfield responds that, while differing levels of scrutiny may be allowed under the handbook, the QAPC has applied a double standard by reading all doubts or ambiguities against Fairfield but in favor of AI's.

Discussion

The legal standard by which we review a contracting officer's determination that a bidder is nonresponsible is well settled:

[a] responsibility determination is a business judgment which involves balancing the contracting officer's conception of the requirement with available information about the contractor's resources and record. We will recognize the necessity of allowing the contracting officer considerable discretion in making such a subjective evaluation. Accordingly, we will not disturb a contracting officer's determination that a prospective contractor is nonresponsible, unless the decision is arbitrary, capricious, or not reasonably based on substantial information. Craft Products Company, P.S. Protest No. 80-41, Feb. 9, 1981. "When the decision of the contracting officer is based on the judgment of technical personnel, the protester must show that such judgment was fraudulent, prejudiced, or arbitrary and capricious." Year-A-Round Corporation, P.S. Protest No. 87-12, June 12, 1987. The contractor bears the heavy burden of proving that either the pre-award survey was inaccurate or the resulting responsibility determination was unreasonable. ARA Food Services Company, P.S. Protest No. 78-35, September 5, 1978. In resolving factual conflicts between the protester and the contracting officer, the statements of

requirements.

¹⁷Section 211.2 of the handbook allows the quality assurance specialist to conduct a desk survey if the prospective contractor has made "similar" items satisfactorily and requires an on-site survey if it has not. Further, Section 252 allows information from previous surveys to be used in evaluating a bidder.

the contracting officer are given a "presumption of correctness" which the protester bears the burden of overcoming. See E-Z Copy, Inc., P.S. Protest No. 88-18, May 10, 1988; Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986.

Production and Delivery Requirements

Despite the complicated assertions of the parties, this issue can be boiled down to a simple question: did Fairfield's production plan clearly specify that two people would perform both the assembly and staking functions?¹⁴ The facts regarding this issue are far from clear. Fairfield's initial submission, dated August 12, 1987, did not address this issue. On September 2, Fairfield enclosed a "Laborer Requirements List" which indicated the intended use of personnel as follows:

<u>TYPE</u>	<u>NO.</u>
Press Operators	2
Inspectors	2
Assemblers	2
Quality Control Foreman	1
Production Foreman	1
Supervisor	1

A note attached to this list stated that "[t]he personnel required are presently employed by Fairfield Stamping. They are highly qualified, experienced and will be available for this project." A plant layout enclosed with this list showed a "stamping press room," with "presses for post office lock chord [sic]" separated by the entire length of the room from the assembly room's space for "assembly for lock chord [sic] fastener." Fairfield's December 18 letter, in response to the contracting officer's doubts about its productive capacity, stated that it "allocated two Benchmasters for the assembly," and volunteered to make available two additional shifts. The letter further stated "[t]o satisfy the requirements well beyond the weekly 20,000 units, we are committing an additional operator to pre-assemble the units for the two Benchmasters."

Given the information supplied by Fairfield the QAPC's analysis that the pressing operation was a stamping operation separate and distinct from assembly and that two people would be both assembling and staking the cordfasteners, was reasonable. The materials submitted by Fairfield do not conclusively support the version of its production plan put forward in its protest.¹⁵ The QAPC's time study analysis was

¹⁴The QAPC calculated a piece rate of 120 per machine per hour with two persons doing both assembly and staking. Fairfield calculates its time of 250 pieces per machine per hour based on two assemblers and two stakers. Therefore, the difference between the two analyses is almost entirely based on how many workers are employed at what tasks.

¹⁵The bidder has the responsibility to make clear any materials submitted during a pre-award survey, and

reasonable, and Fairfield has adduced no significant evidence other than the number of assemblers with which to undercut it. The conclusion, based on this analysis, that Fairfield would not meet the delivery schedule does not fail under the substantial evidence standard.

The contracting officer must make an affirmative determination of a bidder's responsibility. "Doubt as to productive capacity ... which cannot be resolved affirmatively shall require a determination of nonresponsibility." PCM 1-902. (Emphasis added.) Given the state of the evidence before him, the contracting officer's decision that there were doubts regarding Fairfield's productive capacity was reasonable.

Cam and Staple Subassembly Equipment Documentation

Here, the conflict is over whether Fairfield has proposed a method of subassembly which will, in fact, successfully manufacture the cordfasteners with proper quality and in necessary quantities. Fairfield alleges that an index table is sufficient, while the contracting officer thinks that a parts feeder, supply hopper and flow switch are necessary. Fairfield's present position is substantially undercut by its letter of protest (January 28, 1988), which assumed that the devices mentioned in the QAPC's report would be required and attempted to rebut that report by claiming that these items were commercially available, off-the-shelf. Fairfield's inconsistency emphasizes that the issue here is one of differing judgments as to Fairfield's capabilities, and it has not carried its burden of proving the contracting officer's determination to have been arbitrary or capricious. See Omneco, Inc.; Aerojet Production Company, Comp. Gen. Decs. B-218343, B-218343.2, June 10, 1985, 85-1 CPD & 660. The contracting officer's decision as to this issue was supported by substantial evidence and was not arbitrary or capricious.

Lack of Technical Expertise

Fairfield's attack on the technical expertise of the contracting officer and the QAPC also fails. While the analyses of both the contracting officer and the QAPC contain minor errors, the errors do not rise to the level necessary to overturn the nonresponsibility determination. The inaccuracies were on secondary issues which do not detract in any substantial way from the areas in which Fairfield was found fatally deficient. Incorrect evaluation of an aspect of a bidder's capability does not necessarily impair the ultimate nonresponsibility determination. Omneco, Inc.; Aerojet Production Company, supra; Coastal Striping & Painting Corp., Comp. Gen. Dec. B-214869, December 26, 1984,

must bear the consequences of any ambiguities. See Manufacturing Systems International, Inc., Comp. Gen. Dec. B-212173, May 30, 1984, 84-1 CPD & 586; Linde Construction, Comp. Gen. Dec. B-206442, March 17, 1983, 83-1 CPD & 271. Here, Fairfield's documents can be reasonably read to provide for two workers to do both the assembly and staking functions.

84-2 CPD & 697.

Successful 1984 Contract Performance

Past contract performance is an element of a responsibility determination only insofar as that performance is applicable to the solicitation under review. See Cal-Chem Cleaning Company, Incorporated, Comp. Gen. Dec. B-179723, March 12, 1974, 74-1 CPD & 127. It is undisputed that Fairfield's 1984 contract performance consisted of little more than simple stamping without any assembly. The contracting officer's failure to give any weight to the prior performance, significantly different from the cordfastener assembly, was reasonable.

Bias of Postal Employees

To prove that postal personnel have acted towards a bidder with impermissible bias, the protester must show, by evidence sufficient to establish his position affirmatively (Good & Good Contractor, P.S. Protest No. 81-16, August 27, 1981), "virtually irrefutable proof that the officials had a specific and malicious intent to harm the protester, since contracting officers otherwise are presumed to act in good faith. Prejudicial motives will not be attributed to such officials on the basis of inference or supposition." I.C., Inc., P.S. Protest No. 86-06, April 25, 1986, quoting Rodgers-Cauthen Barton-Cureton, Inc., Comp. Gen. Dec. B-220722.2, January 8, 1986, 86-1 CPD & 19.

The QAPC has admitted that he treated AI's and Fairfield differently because of AI's prior experience producing cordfasteners. His actions were allowed by the quality assurance handbook and do not rise to the level of impermissible bias. Contracting officers have broad discretion over the nature and extent of pre-award surveys. Certified Testing Corporation, Comp. Gen. Dec. B-212242, November 8, 1983, 83-2 CPD & 542. Different levels of scrutiny, not different standards, were used in evaluating the two bidders and we will not overturn the award on this basis, as there has been no showing of specific and malicious intent to harm Fairfield.

We have considered all the issues raised by Fairfield. While the pre-award review and determination of its nonresponsibility were not entirely error-free, no irregularities were of sufficient magnitude to justify a reversal of the contracting officer's determination.

The protest is denied.

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Office of Contracts and Property Law

[checked against original JLS 2/23/93]